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No. 88-124

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IN THE

Supreme Court of the United States

October Term, 1988

LYNN L. BRENINGER,
Petitioner,

vs.

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 6,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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A. Whether questions concerning the alleged discriminatory operation of a hiring hall are preempted by the exclusive jurisdiction of the National Labor Relations Board?

B. Whether the alleged discriminatory operation of a hiring hall constitutes "discipline" within the meaning of Section 101(a)(5) and Section 609 of the Labor-Management Reporting and Disclosure Act?

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

PARTIES TO PROCEEDINGS BELOW

The Respondent Union does not contest the statement of the parties participating in the proceedings before the United States District Court for the Northern District of Ohio and the United States Court of Appeals for the Sixth Circuit set forth in the Petition for Writ of Certiorari.

OPINIONS BELOW

The Respondent Union does not contest the statement of the opinions of the United States District Court for the Northern District of Ohio and of the United States Court of Appeals for the Sixth Circuit set forth in the Petition for Writ of Certiorari.

STATEMENT OF JURISDICTION

The Respondent does not contest the statement of jurisdiction set forth in the Petition for Writ of Certiorari.

STATUTORY PROVISIONS INVOLVED

The Respondent Union does not contest the statement of the applicable statutory provisions set forth in the Petition for Writ of Certiorari.

RESTATEMENT OF THE CASE

The Respondent Sheet Metal Workers International Association, Local Union No. 6 (hereinafter referred to as the "Union") is signatory to a collective bargaining agreement with various employer-contractors, who are members of the Toledo Area Sheet Metal and Roofing Contractors Association and/or the Toledo Heating and Air Conditioning Contractors Association. Article V of this collective bargaining agreement provides that the Union shall refer sheet metal workers to employers performing work within the Union's traditional work and territorial jurisdiction upon the request of an employer.[1]

Thus, pursuant to Article V of the collective bargaining agreement, the Union maintains a non-exclusive hiring hall. The hiring hall is non-exclusive because a sheet metal worker may obtain employment in a number of ways. First, a sheet metal worker may be referred from an "out of work" list maintained by the Union. Second, a signatory employer may request that a particular sheet metal worker be referred by name. Finally, an individual may solicit and obtain employment from signatory employers through his or her own self-help efforts.[2]

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[1] Specifically, Article V, paragraph 11 of the collective bargaining agreement provides:

> The Union agrees to furnish upon request by the employer duly qualified journeymen and apprentice sheet metal workers in sufficient numbers as may be necessary to properly execute work contracted for by the Employer in the manner and under the conditions specified in this Agreement. Employers agree to confirm in writing to Local No. 6 when requesting Employees. The Union agrees not to delay the referral of Employees because of delays in mailing the request.

[2] A non-local employer (*i.e.*, a contractor who does not have a principal place of business within the Union's territorial jurisdiction) is permitted to hire two sheet metal workers without regard to the Union's "out of work" list when the employer is working in the Union's jurisdiction. This "two man rule" is also applicable if the employer requests that specifically named sheet metal workers be referred by the Union and/or if individual sheet metal workers solicit employment with the employer through their own efforts.

A sheet metal worker who wishes to be referred by the Union for employment either signs his name to the "out of work" list or calls the Union hall and has his name placed on the list. When an employer needs sheet metal workers, he contacts the Union hall and requests the particular number of sheet metal workers which he needs. Upon receiving a request for sheet metal workers from a contractor, the Union attempts to contact that individual who is first on the "out of work" list. A sheet metal worker is not required to be present at the Union hall in order to be referred for employment. Thus, the Union places a telephone call to the individual in an effort to offer him or her the referral. If the person cannot be contacted, the Union goes to the next name on the "out of work" list and attempts to contact him. This procedure continues until a person who is on the "out of work" list is contacted. Once contact is made, the referral is offered to the individual who then has the option of accepting or rejecting the employment. However, a sheet metal worker does not lose his place on the "out of work" list for refusing to accept a referral.

Upon accepting the referral, the individual is informed when and where to report for work and is given an "introductory card," which is presented to the Union's steward at the jobsite. Because of the transitory nature of employment in the construction industry, a sheet metal worker must be employed for ten consecutive days before his name is taken off the "out of work" list. An employer always reserves the right to hire or not hire a sheet metal worker referred by the Union.

In addition to the regular "out of work" list, the Union also maintains a separate list for members who wish to work under the Union's "Specialty Agreement." This Agreement is a separate addendum to the collective bargaining agreement. Work performed pursuant to the

"Specialty Agreement" is paid at a wage rate lower than that provided in the collective bargaining agreement. Therefore, work performed under the "Specialty Agreement" is strictly voluntary. Consequently, the Union cannot refer an individual under the "Specialty Agreement" unless he or she has expressly signed his or her name to the referral list maintained specifically for purposes of that agreement.

A sheet metal worker may also obtain employment when a contractor-employer specifically requests a particular individual by name.[3] When such a request is made, it is the Union's responsibility to satisfy the employer's wishes and get the requested employee out to the jobsite. If the Union is unable to contact the employee or the employee refuses to accept the referral, the Union will follow the procedure outlined previously and proceed to refer sheet metal workers off the "out of work" list.

Finally, a sheet metal worker always retains the right to solicit employment through his own efforts. No penalty is imposed upon a sheet metal worker for personally soliciting work from an employer.

The Petitioner in the instant matter, Lynn L. Breininger, is and has been a member of the Union since the early 1950's. He is familiar with the collective bargaining agreement and with the collective bargaining process. Furthermore, he is personally familiar with and understands all aspects of the Union's non-exclusive referral procedure. Petitioner Breininger is also

[3] An employer may also request that a worker possess a particular skill. Thus, for example, an employer contractor may request that the sheet metal workers referred to it be certified welders. Because all sheet metal workers are not certified welders, the Union will search the "out of work" list and offer the referral to the first certified welder on the list.

personally familiar with and understands the self-solicitation method of obtaining employment. He has had his name placed on the "out of work" list and has been referred off the list by the Union for employment. Furthermore, he has also solicited and obtained employment through his own efforts. However, Petitioner Breininger never signed the "out of work" list maintained pursuant to the Union's specialty agreement. Thus, he is ineligible for sheet metal work referrals covered by the provisions of that agreement.

The Union has repeatedly called Petitioner Breininger for job referrals when his name has come up on the "out of work" list. Indeed, when he has called the Union to determine his place on the "out of work" list, he has always been so informed. The Union has never refused any of his requests to place his name on the "out of work" list. Furthermore, the Union has never interfered with his efforts to solicit sheet metal work employment on his own.

On December 13, 1983, the Petitioner brought suit against the Union in the United States District Court for the Northern District of Ohio upon the theory that the Union's alleged discriminatory referral practices constituted a breach of the Union's duty of fair representation. An amended complaint was filed by Petitioner on March 16, 1984, wherein Petitioner asserted that the Union's alleged discriminatory referral practices constitued "discipline" in violation of Section 101(a)(5) of the Labor Management Reporting and Disclosure Act of 1959 (hereinafter referred to as the "LMRDA"), 29 U.S.C. Section 411(a)(5) and Section 609 of the LMRDA, 29 U.S.C. Section 529.

The Union filed a Motion for Summary Judgment on September 10, 1986. Therein, the Union asserted as grounds for the motion that: (1) the District Court's

jurisdiction was preempted by the exclusive jurisdiction of the National Labor Relations Board, (2) the Union did not otherwise breach its duty of fair representation, and (3) the Union had not violated any right cognizable under Section 101(a)(5) and/or Section 609 of the LMRDA upon making hiring hall referrals.

The District Court granted the Union's Motion for Summary Judgment in an Opinion and Order dated February 20, 1987. *See*, Petition Appendix at A4. The District Court found that Petitioner's claims were preempted by the exclusive jurisdiction of the National Labor Relations Board and dismissed Petitioner's amended complaint. *See*, Petition Appendix at A8-A10.

Petitioner appealed to the United States Court of Appeals for the Sixth Circuit. On March 1, 1988, the Court of Appeals affirmed the District Court, holding that Petitioner's claims regarding alleged discriminatory hiring hall referrals were within the exclusive competence of the National Labor Relations Board and that hiring hall discrimination does not constitute "discipline" violative of the provisions of the Labor Management Reporting and Disclosure Act. *See*, Petition Appendix at A1. For the reasons which follow, the Petition for Writ of Certiorari must be denied.

REASONS WHY THE PETITION SHOULD BE DENIED

I. PETITIONER'S CAUSE OF ACTION IS PREEMPTED BY THE EXCLUSIVE JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD.

The allegations contained in the Petition reveal that Petitioner takes issue with that portion of the decision of the United States Court of Appeals for the Sixth Circuit which affirmed the District Court's dismissal of Petitioner's action on federal preemption grounds. *See*, Petition Appendix at A2. Specifically, the District Court and the Court of Appeals found that Petitioner sought relief from alleged discriminatory job referral practices conducted by Respondent Union, which practices were within the exclusive jurisdiction of the National Labor Relations Board. *See*, Petition Appendix at A1-A3, A4-A10, A16-A23. The discussion which follows will demonstrate that the Court of Appeals' affirmance of the District Court's dismissal was entirely consistent with prior decisions of this Court and therefore, the Petition must be dismissed.

This Court has long held that the National Labor Relations Board has *exclusive* jurisdiction over matters which are arguably protected by Section 7 of the Labor Management Relations Act of 1947 (hereinafter referred to as the "LMRA"), 29 U.S.C. Section 157, and over matters which are arguably prohibited by Section 8 of the LMRA, 29 U.S.C. Section 158. *See, San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). The express rationale of this Court's *Garmon* decision was the prevention of even the potential of conflict with the statutory scheme developed by Congress to regulate the relations between industrial management and its work force. *See, Garmon*, 359 U.S. at 239-240. Thus,

Congress created a specialized body (*i.e.*, the National Labor Relations Board) with specially designed procedures for the express purpose of achieving uniform application of the national labor laws and avoiding the inevitable conflicts "likely to result from a variety of local procedures and attitudes towards labor controversies." *See, Garmon*, 359 U.S. at 242-243. Moreover, this Court established in *Garmon*, that even where the National Labor Relations Board fails to assume jurisdiction over a matter within its competence, both state and federal courts are prohibited from asserting their influence to decide the matter. *See, Garmon*, 359 U.S. at 242-243. Moreover, this Court established in *Garmon*, that even where the National Labor Relations Board fails to assume jurisdiction over a matter within its competence, both state and federal courts are prohibited from asserting their influence to decide the matter. *See, Garmon*, 359 U.S. at 245-246.

Consistent with the *Garmon* doctrine, this Court has made it abundantly clear that Union discrimination against individuals in regard to matters involving employment opportunities is subject to the preemption principles detailed in *Garmon*. Specifically, this Court has unequivocally held that court actions against labor organizations seeking relief from discriminatory referral practices are preempted by the exclusive competence of the National Labor Relations Board. *See, Local 100, United Association of Journeymen and Apprentices v. Borden*, 373 U.S. 690 (1963); *Farmer v. United Brotherhood of Carpenters*, 430 U.S. 290 (1977).

In *Borden*, this Court noted that discriminatory referral practices are arguably prohibited by Section 8(b)(1)(A) of the LMRA, 29 U.S.C. Section 158(b)(1)(A) and Section 8(b)(2) of the LMRA, 29 U.S.C. Section

158(b)(2). *See, Borden*, 373 U.S. at 694. Notwithstanding that the claimant in *Borden* contended that the action therein was grounded upon an internal dispute between a union and a member unrelated to employment matters for which the National Labor Relations could not afford relief, this Court nevertheless held that "[t]he 'crux' of the action . . . concerned Borden's employment relations and involved conduct arguably subject to the Board's jurisdiction." *See, Borden*, 373 U.S. at 697. The fact that the action was grounded upon contract and tort law was found to be insignificant, since "[i]t is not the label affixed to the cause of action . . . that controls the determination of the relationship between state and federal jurisdiction." *See, Borden*, 373 U.S. at 698. In sum, this Court concluded that the conduct challenged in *Borden*, "whether described in terms of tort or contract, is conduct whose lawfulness could initially be judged only by the federal agency vested with exclusive primary jurisdiction to apply federal standards." *See, Borden*, 373 U.S. at 698.[4]

In light of the previous decisions of this Court, it is clear that the Court of Appeals and the District Court made a routine application of the law by dismissing Petitioner's action. In this regard, a review of

[4] This Court's decision in *Farmer v. United Brotherhood of Carpenters*, 430 U.S. 290 (1977), is of similar import. Thus, in *Farmer*, this Court noted that to avoid the impact of the preemption doctrine in cases involving union discrimination in employment opportunities, it is essential that the claim for which relief is sought "be either unrelated to employment discrimination or a function of the particularly abusive manner in which the discrimination is accomplished or threatened rather than a function of the actual or threatened discrimination itself." *See, Farmer*, 430 U.S. at 305. *See also, Local 207, International Association of Bridge, Structural and Ornamental Iron Workers v. Perko*, 373 U.S. 701 (1963); *Amalgamated Association of Street, Electric Railway and Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971).

Petitioner's amended complaint makes clear that the crux of Petitioner's cause of action concerned alleged discriminatory operation by the Union of the referral system. *See*, Petition Appendix at A16. However, it is beyond dispute that the operation of a referral system by a union in a discriminatory manner is in fact prohibited by the LMRA. *See, Borden*, 373 U.S. at 694. Therefore, there is no question but that resolution of Petitioner's cause of action was directly related to employment discrimination and would have interfered with the exclusive jurisdiction of the National Labor Relations Board. *See, Farmer v. United Brotherhood of Carpenters*, 430 U.S. 290, 305 (1977).[5]

Therefore, it is clear that the decisions of the courts below are in accord with the previous mandates of this Court. Petitioner has presented no reasons indicating why the instant case is one of public importance and indeed, has failed to present any *real* conflict of authority between the federal courts of appeal. Consequently, there is no occasion for this Court to exercise its discretionary power to grant certiorari and dismissal of the Petition is more than warranted.

[5] Petitioner's argument, that the preemption doctrine is applicable only to state court claims, *see*, Petition at p. 5, is specious and not worthy of any lengthy discussion. In this regard, this Court in *Garmon* made clear that federal courts are also prohibited from exercising jurisdiction which would interfere with the exclusive competence over labor relations matters enjoyed by the National Labor Relations Board. *See, Garmon*, 359 U.S. at 245.

A. Petitioner's allegation of a breach of the duty of fair representation does not prevent application of the preemption doctrine.

Petitioner argues that because he has alleged in his amended complaint that Respondent Union breached its duty of fair representation by allegedly discriminating against him through discriminatory referrals, the lower courts erred in dismissing his action. However, Petitioner's argument is without merit and demonstrates a lack of understanding of the interrelationship between the national labor laws and the precedent established by this Court.

It is well-settled that federal courts retain jurisdiction to remedy breaches of a union's duty of fair representation. *See, Vaca v. Sipes*, 386 U.S. 171 (1967). In this regard, this Court has recognized that a labor organization has a duty to avoid arbitrary, discriminatory and bad faith conduct in the negotiation, administration and enforcement of collective bargaining agreements. *See, Vaca*, 386 U.S. at 176-188. Because a fair representation suit frequently "require[s] review of the substantive positions taken and policies pursued by a union in its negotiation of a collective bargaining agreement and in its handling of the grievance machinery", matters which are not normally within the jurisdiction of the National Labor Relations Board, this Court has emphasized that such suits are not preempted by the LMRA and/or the jurisdiction of the Board. *See, Vaca*, 380 U.S. at 180-181.

However, a plaintiff may not avoid the preemptive effect of the National Labor Relations Board's exclusive and primary jurisdiction by framing his cause of action as a fair representation case. Thus "[i]t is not the label affixed to the cause of action ... that controls the

determination" of whether a federal court's jurisdiction is preempted. *See, Borden*, 373 U.S. at 698. Indeed, this Court has recently reaffirmed this principle. In *Communications Workers of America v. Beck*, 56 U.S.L.W. 4857 (U.S. June 29, 1988), this Court noted that "[e]mployees ... may not circumvent the primary jurisdiction of the NLRB simply by casting statutory claims as violations of the union's duty of fair representation." *See, Beck*, 56 U.S.L.W. at 4859. This Court characterized the plaintiffs' claim in *Beck* as one seeking relief for a breach of the duty of fair representation because the union therein *negotiated* and *enforced* a collective bargaining agreement which did not serve the plaintiffs' interests. *Id.* Thus, it is clear that conduct unrelated to the negotiation, administration and enforcement of a collective bargaining agreement, which is arguably protected or prohibited by the LMRA is conduct subject to the National Labor Relations Board's exclusive jurisdiction. Consequently, discrimination in the operation of a hiring hall referral system does not implicate the duty of fair representation. *See, Hackenburg v. International Brotherhood of Boilermakers*, 694 F.2d 1237 (10th Cir. 1982).

Indeed, this Court has previously affirmed a district court decision involving the very issue present in the instant matter. *See, Tyree v. Edwards*, 287 F. Supp. 589 (D. Alaska 1968), *aff'd per curiam sub nom., Alaska v. International Union of Operating Engineers*, 393 U.S. 405 (1969). In *Tyree*, the district court overturned a state court injunction issued against a labor organization which prohibited the union from operating a discriminatory referral system. *See, Tyree*, 287 F. Supp. at 594-595. The district court held that the state court's jurisdiction to regulate discriminatory referral practices was preempted, notwithstanding that such conduct

could also breach its duty of fair representation. *Id.* at 595. Upon direct appeal, this Court summarily affirmed. *See, Alaska v. International Union of Operating Engineers*, 393 U.S. 405 (1969).

The Petitioner argues that the Court of Appeals decision below is somehow at odds with this Court's decision in *Amalgamated Association of Street, Electric Railway and Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971). However, in *Lockridge*, this Court expressly declined to consider the effect of the *Garmon* preemption doctrine. *Id.* at 299. Nevertheless, it remains clear that the duty of fair representation arises only in the context of the negotiation, administration and enforcement of a collective bargaining agreement. *See, Vaca v. Sipes, supra; Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953). Conduct by a labor organization outside these areas does not implicate the organization's duty of fair representation, because the duty arises out of a union's status as exclusive representative for the purposes of collective bargaining. *See, Steele v. Louisville & Nashville Railroad*, 332 U.S. 192 (1944); *Tunstall v. Brotherhood of Locomotive Foremen*, 323 U.S. 210 (1944). Thus, where a union engages in activities unrelated to collective bargaining, it is not acting as an employee's "exclusive representative" and consequently there is simply no duty to breach. A union's conduct is then subject solely to the mandates of the national labor laws.[6]

[6] In light of these principles, Petitioner's alleged conflict between the Court of Appeals' decision below and that Court's decision in *Storey v. Local 327, International Brotherhood of Teamsters*, 759 F.2d 517 (6th Cir. 1985) is unquestionably non-existent, because the conduct alleged to breach the duty of fair representation therein involved the *negotiation* of a collective bargaining agreement. *Id.* at 518.

Petitioner has therefore clearly failed to show how the decisions of the lower courts were inconsistent with the prior decisions of this Court regarding the preemption doctrine and the duty of fair representation. The conduct which Petitioner challenges unmistakably constitutes discrimination in the operation of a referral system. A review of the amended complaint filed by Petitioner in the District Court reveals a complete lack of any allegation that the Union had violated its duty of fair representation in the negotiation, administration and enforcement of a collective bargaining agreement. *See,* Petition Appendix at A16-A23. Indeed, Petitioner's admission that no breach of the collective bargaining agreement had occurred highlights the fact that there was never any occasion for the Union to exercise its duty of fair representation. Therefore, it is clear that Petitioner's mere framing of his complaint to allege a breach of the duty of fair representation does not prevent the application of the preemption doctrine, as the District Court and the Court of Appeals correctly recognized. Indeed, in light of this Court's decision in *Borden*, dismissal of Petitioner's cause of action was compelled. Consequently, this Court must deny the Petition.

II. THE ALLEGED DISCRIMINATORY OPERATION OF A REFERRAL SYSTEM DOES NOT CONSTITUTE "DISCIPLINE" WITHIN THE MEANING OF THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT.

Petitioner also takes issue with the Court of Appeals' holding that discrimination in employment referrals through a union hiring hall does not constitute "discipline", within the meaning of Section 101(a)(5) of the LMRDA, 29 U.S.C. Section 411(a)(5) and Section 609 of the LMRDA, 29 U.S.C. Section 529. In this regard, Petitioner's sole argument is that the decision is in alleged conflict with a prior decision of the United States Court of Appeals for the Sixth Circuit in *Murphy v. International Union of Operating Engineers, Local 18*, 794 F.2d 114 (6th Cir. 1985). Thus, Petitioner fails to point to any *real* conflict of authority between the federal courts of appeals which would warrant the exercise of this Court's discretionary power to review upon certiorari. *See, Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70 (1955); *Wayne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387 (1923).

In *Finnegan v. Leu*, 456 U.S. 431 (1982), this Court construed the term "otherwise disciplined" contained in Section 101(a)(5) and Section 609 of the LMRDA as "refer[ing] only to punitive actions diminishing *membership* rights . . ." *Id.* at 438. In this regard, this Court noted that the aforementioned provisions were intended to secure the rights of union members in relation to their status as members, and not to secure other rights related to a union member's employment. *Id.* at 436-438.

The federal courts of appeals have consistently held that loss of referral opportunities through a union's referral system does not constitute "discipline" within the scope of the LMRDA. Thus, in *Hackenburg v. International Brotherhood of Boilermakers*, 694 F.2d 1237 (10th Cir. 1982), the Court of Appeals for the Tenth Circuit held that in light of *Finnegan*, the term "otherwise disciplined" was confined "to retaliatory actions that affect a union member's rights or status as a member of the union." *Id.* at 1239. The court described the loss of referral opportunities as a sanction which was employment related "rather than internal union related." *Id.* at 1240. Similarly, in *Turner v. Local Lodge 455*, 755 F.2d 866 (11th Cir. 1985), the Court of Appeals for the Eleventh Circuit held that loss of referral opportunities did not affect the plaintiffs' status as members of the union "because one is not required to belong to the union to be carried on the out of work list and be referred to prospective employers when one's turn arrives." *Id.* at 869.[7] Therefore, because referrals through a hiring hall system are available to members and non-members alike, referrals are consequently not a function of union membership. It is then clear that alleged discrimination in referrals does not affect any union membership rights which implicate the LMRDA.

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[7] A referral system must be open to union members and non-members alike. A labor organization violates Section 8(b)(2) of the LMRA, 29 U.S.C. Section 158(b)(2) when it refuses to refer non-members through the referral system. *See e.g., United Association of Journeymen, Local 633*, 178 N.L.R.B. 396, *enf'd*, 436 F.2d 1386 (6th Cir. 1971). *See also, Local 357, International Brotherhood of Teamsters v. NLRB*, 365 U.S. 667 (1961).

Petitioner's argument in the instant matter is that the decision of the Court of Appeals below conflicts with its prior decision in *Murphy v. International Union of Operating Engineers, Local 18*, 774 F.2d 114 (6th Cir. 1985). However, it is clear that in *Murphy* the Court of Appeals for the Sixth Circuit affirmed the district court's holding that there was no "discipline" through the improper administration of a referral system. *Id.* at 122. The Court of Appeals held that the "mere unsystematic manipulation, as opposed to a total foreclosure of such job referrals, may not constitute 'discipline' . . ." *Id.* Thus, the *Murphy* decision is consistent with the decisions of the other federal courts of appeals which have considered whether discriminatory job referrals constitute "discipline" for purposes of the LMRDA.

In light of the applicable precedent detailed above, it is clear that the courts below properly dismissed Petitioner's LMRDA claim. Thus, there is no reason for this Court to exercise its discretion to review and the Petition must be dismissed.

CONCLUSION

For all the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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